

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
August 19, 2008 Session

**STATE OF TENNESSEE v. EMMANUEL ODOM**

**Appeal from the Criminal Court for Davidson County**  
**No. 2005-B-834     Seth Norman, Judge**

---

**No. M2007-01671-CCA-R3-CD - Filed November 3, 2008**

---

Originally charged with first degree felony murder, first degree premeditated murder, and two counts of attempted aggravated robbery, the defendant, Emmanuel Odom, received Davidson County Criminal Court jury convictions of two counts of second degree murder and two counts of attempted aggravated robbery. The trial court imposed an effective sentence of 24 years' incarceration. In this appeal, the defendant challenges the sufficiency of the evidence and contends that the trial court erred by failing to suppress the pretrial identification of the defendant by State witness David Bush. Discerning no reversible error, we affirm the judgments of the trial court. The case must be remanded to the trial court, however, for the entry of corrected judgments reflecting that the convictions of second degree murder are merged into a single conviction.

**Tenn. R. App. P. 3; Judgments of the Criminal Court Affirmed; Remanded**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and CAMILLE R. McMULLEN, J., joined.

David A. Collins, Nashville, Tennessee (at trial and on appeal); Jonathan Wing, Assistant Public Defender (at hearing on motion to suppress), for the appellant, Emmanuel Odom.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Victor S. Johnson III, District Attorney General; and Sharon Reddick and Dan Hamm, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

The convictions in this case emanate from the November 17, 2004 attempted aggravated robbery of David Bush and murder and attempted aggravated robbery of Gayle Meadows at a Nashville apartment complex. On that date, the two victims traveled to Nashville to purchase "some pills" from 16-year-old Diana Siharat. Ms. Siharat agreed to arrange the purchase and told the men to wait in the parking lot. As they waited, a black male approached the passenger's side of their truck and demanded their money at gunpoint. Both men claimed they had no money, and Mr.

Bush drove the truck away at a high rate of speed. The man then fired two shots at the vehicle, and a single bullet struck and killed Mr. Meadows.

The defendant and co-defendant Christopher Scales were tried jointly for the murder of Mr. Meadows and the attempted aggravated robbery of both Mr. Meadows and Mr. Bush.

At trial, Ms. Siharat testified that on the day of the offenses, she was “hanging out” with the defendant, co-defendant Scales, and “13 or 14”-year-old Nikia Walter when the victims arrived looking to purchase “some pills.” Ms. Siharat explained that at the time of the offenses she “[g]ot people pills” as a way to make money. She spoke with the victims and arranged for them to purchase “\$500 worth” of pills from “the pill man.” During this time, co-defendant Scales accompanied her to the victims’ vehicle while Ms. Walter and the defendant remained on the porch. The victims waited for their drugs for “about an hour,” during which time Ms. Siharat was “in and out” of various apartments facilitating the drug purchase. On one of her trips inside an apartment, Ms. Siharat heard a gunshot and turned to see the defendant shoot Mr. Meadows. After the shooting, the vehicle carrying the victims “sped off,” and she fled the scene with the defendant, co-defendant Scales, and Ms. Walter. They traveled to her uncle’s residence and paid him “\$10 to spend the night.” While there, the defendant “took the bullets and flushed them down the toilet and put the gun up under the mattress.” The following morning, the four ran to a nearby grocery store and later split up.

Mr. Bush confirmed that he and Mr. Meadows traveled to Nashville “to score some Dilaudid,” which he described as a generic form of heroin. They first went to the residence they believed Ms. Siharat to share with her mother and were then directed to an apartment complex on Russell Street.

At the apartment complex, Ms. Siharat approached their vehicle and introduced them to “Little C,” whom Mr. Bush identified as co-defendant Scales. Mr. Bush recalled that at one point during their long wait for “the pill man,” he turned the truck around and backed it into a parking space because they feared being robbed. Shortly after moving the vehicle, the defendant “approached the passenger’s side of the truck. . . . And then Little C appeared with him. The man with the gun said for us to give him our money or he was going to put a cap in our ass.” After they told the defendant they had no money, the defendant “told Little C to walk around the truck and get the keys out of the ignition so we couldn’t take off.” Mr. Bush remembered, “[W]hen Little C c[a]me around to get the keys, I said, Hell, no, and started the truck and sped off.” As they fled, Mr. Bush heard gunshots and then heard Mr. Meadows say, “They killed me, they killed me.” After the shooting, Mr. Bush drove to nearby Shelby Park and used a borrowed cellular telephone to call an ambulance.

Two days following Mr. Meadows’ murder, Mr. Bush met with Detective Tom Jones of the Metro Police Department and viewed two photographic arrays. He identified both the defendant and co-defendant Scales from the lineups. Mr. Bush also identified the defendant in court as the shooter.

James “Ricky” Bell admitted directing Mr. Bush and Mr. Meadows to the apartment complex on Russell Street so that they could purchase “100 pills” from Ms. Siharat. While at the complex, Mr. Bell overheard co-defendant Scales say, “Take them up to Johnny’s house[,] [w]e want[] to rob them.” At that point, Mr. Bell warned the men that they might be robbed. Shortly thereafter, “a vehicle pulled in . . . right beside the truck . . . and [the defendant] got in the backseat” but left the door open. “Right after that [the defendant] got out of the car, came up beside [Mr. Bell] . . . and at the truck, and pulled a pistol out.” The car that had parked next to the victims “[s]ped off,” and the defendant demanded money from the victims. The truck carrying the victims also sped away, and, as it did, “Chris c[a]me back around and said, Bust ‘em and [the defendant] shot him twice.”

Assistant Shelby County Medical Examiner Doctor Stacy Turner performed an autopsy of Mr. Meadows and determined that the “cause of death [was] a gunshot wound to the abdomen.” Doctor Turner testified that the bullet, which was fired down and to the left, traveled “into the upper abdomen, just to the right of the middle, [and] went through the muscle of the abdominal wall, his liver, his stomach, and his spleen, and . . . exited the left side of his back.”

After interviewing Mr. Bush and several other individuals, Detective Jeff Wiser issued warrants for the arrest of the defendant and co-defendant Scales. After the issuance of the warrants, Detective Tom Jones presented two photographic arrays to Mr. Bush, from which Mr. Bush identified the defendant as the shooter and co-defendant Scales as his accomplice. Despite the broadcast of the warrant information through various media outlets, the defendant was not apprehended until January 17, 2005, when Metro Police Officer Cole Womack found him hiding beneath the insulation in his mother’s attic.

At the conclusion of the trial, the jury convicted the defendant of two counts of second degree murder for the death of Mr. Meadows and two counts of attempted aggravated robbery. Following a sentencing hearing, the trial court imposed an effective sentence of 24 years’ incarceration. This timely appeal followed.

### *I. Sufficiency of the Evidence*

Assailing the sufficiency of the convicting evidence, the defendant posits that “the disparities and contradictions in the testimony of the State’s witnesses” so undermine the proof presented at trial that his convictions should be overturned. The State asserts that the evidence presented at trial amply supports each of the convictions.

We review the defendant’s claim mindful that our standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). This standard applies to findings of guilt based upon

direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654.

During our review, this court must not re-weigh the evidence, and we are not free to substitute our own inferences for those drawn by the trier of fact. *Id.* at 655. “The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact.” *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007) (citing *Byrge v. State*, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)); *see also State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978), *superseded by statute on other grounds as stated in State v. Barone*, 852 S.W.2d 216, 218 (Tenn. 1993). Significantly, this court must afford the State the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Vasques*, 221 S.W.3d at 521; *Cabbage*, 571 S.W.2d at 835.

In his brief, the defendant directs this court to a variety of “disparities and contradictions” which, he says, establish that Mr. Bush was too “high on Dilaudid and crack cocaine” to accurately recall the evening of the offenses, that Ms. Siharat lied in order to protect co-defendant Scales, and that Mr. Bell fabricated his testimony in hopes of receiving leniency on his pending criminal charges. Our standard of review, however, does not permit a recasting of the evidence in the manner desired by the defendant. The jury, as the trier of fact, resolves all issues of credibility and factual inconsistency, and this court is not free to assail those conclusions. *See, e.g., State v. Dotson*, 254 S.W.3d 378, 395 (Tenn. 2008); *Vasques*, 221 S.W.3d at 521; *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997) (“A guilty verdict by the jury, approved by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the prosecution’s theory.”); *Cabbage*, 571 S.W.2d at 835 (recognizing that “all conflicts in testimony, upon a conviction in the trial court, are resolved in favor of the State”). Given that his challenge rests solely upon a revisiting of the credibility and factual determinations made by the jury, the defendant has failed to meet his burden of establishing that the evidence was legally insufficient to support his convictions. *See Vasques*, 221 S.W.3d at 521 (“Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.”).

The evidence, taken in the light most favorable to the State, established that the defendant, co-defendant Scales, Ms. Siharat, and Ms. Walter were together at an apartment complex when the victims arrived looking for drugs. Ms. Siharat arranged for the victims to purchase drugs from “the pill man,” and, while the victims waited, co-defendant Scales engaged the men in conversation. After a red vehicle entered the parking lot and left, the defendant appeared at the passenger’s side door of the victims’ vehicle and demanded their money at gunpoint. When Mr. Bush drove away, the defendant fired two shots at the vehicle, striking and killing Mr. Meadows. This evidence is sufficient to support the convictions of second degree murder and attempted aggravated robbery.

## II. Suppression of Pretrial Identification

The defendant also challenges the trial court's denial of his pretrial motion to suppress the pretrial identifications of the defendant made by Mr. Bush. He contends that the identification procedure utilized by Detective Jones was "so inherently suggestive that [it] gave rise to an irreparable risk of misidentification, and thus violated" various of his rights under the federal and state constitutions.

"[C]onvictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Simmons v. United States*, 390 U.S. 377, 384, 88 S. Ct. 967, 971 (1968). In *Simmons*, the Court observed that "improper employment of photographs by police may sometimes cause witnesses to err in identifying criminals." *Id.* at 383. Noting that "[e]ven if the police subsequently follow the most correct photographic identification procedures . . . , there is some danger that the witness may make an incorrect identification," the Court concluded that the danger of misidentification "will be increased if the police display to the witness only the picture of a single individual who generally resembles the person he saw, or if . . . the photograph of a single such individual recurs or is in some way emphasized." *Id.* The Court also observed that "[t]he chance of misidentification is also heightened if the police indicate to the witness that they have other evidence that one of the persons pictured committed the crime." *Id.*

Following *Simmons*, the Court in *Neil v. Biggers*, 409 U.S. 188, 198-99, 93 S. Ct. 375, 381-82 (1972), established a two-part analysis to assess the validity of a pre-trial identification. First, the trial court must determine whether the identification procedure was unduly suggestive. *Id.* at 198, 93 S. Ct. at 381-82. Next, if the trial court determines that the identification was unduly suggestive, it must then consider whether, under the totality of the circumstances, the identification procedure was nonetheless reliable. *Id.* at 198-99, 93 S. Ct. at 382.

The trial court denied the defendant's pretrial motion to suppress the eyewitness identifications, concluding that the defendant had failed to establish that the identification procedure used with each witness was impermissibly suggestive. When the trial court makes a finding of facts at the conclusion of a suppression hearing, the facts are accorded the weight of a jury verdict. *State v. Stephenson*, 878 S.W.2d 530, 544 (Tenn. 1994). The trial court's findings are binding upon this court unless the evidence in the record preponderates against them. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *see also Stephenson*, 878 S.W.2d at 544; *State v. Goforth*, 678 S.W.2d 477, 479 (Tenn. Crim. App. 1984). Questions of credibility of witnesses, the weight and value of the evidence, and resolution of conflicts in evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from the evidence. *Odom*, 928 S.W.2d at 23. We review the defendant's claim with these standards in mind.

Evidence adduced at the hearing on the suppression motion and at trial established that, after receiving information casting suspicion on the defendant and co-defendant Scales, Detective Jones prepared two separate photographic arrays: one using the defendant's physical description and demographic information as parameters and a second using co-defendant Scales's physical description and demographic information as parameters. The detective testified that he entered the information into a computer program, which then supplied a number of mug shots of individuals with similar characteristics. Detective Jones used the mug shots to prepare the two photographic lineups that he later displayed to Mr. Bush. The detective recalled that Mr. Bush quickly identified both the defendant and co-defendant Scales and that he expressed no uncertainty with regard to either identification. Detective Jones admitted that he informed Mr. Bush prior to displaying the lineups that arrest warrants had been issued for two individuals. He also admitted that he congratulated Mr. Bush on a job "well done" after the witness had selected photographs of the defendant and co-defendant Scales. For his part, Mr. Bush testified that he was certain of the identifications, which, he insisted, were made under temporal and lighting conditions that allowed for good observation of the physical characteristics of each man. Detective Jones insisted, and Mr. Bush confirmed, that the detective did nothing to suggest that Mr. Bush select the defendant's photograph from the array.

In its order denying the motion to suppress, the trial court concluded that "it does not appear as though the photographic lineup identification of the defendant was unduly suggestive." Regarding the photographic lineup, the trial court concluded:

While it is true that the defendant's photo is lighter than the others, it is only slightly lighter than some. The individual in the photo next to that of the defendant also has a bright spot on his forehead, albeit not as prominent. The differences between the photos in the array are very minimal and do not appear to be suggestive in any way. The individuals all have similar looks, including hairstyles, facial hair[,] and skin tone. As to the issue of the position of the photographs in the array, there is no proof from which it may be concluded that the placement of a photo in a particular area of a photographic lineup is suggestive.

Based on the foregoing analysis, the [c]ourt is of the opinion that the photographic lineup identification procedure in this case was not unduly suggestive.

We agree.

Neither Mr. Bush nor Detective Jones described any behavior that could arguably have been designed to suggest the selection of the defendant's photograph. The photographic array, which appears in the appellate record, is not suggestive on its face. Although the defendant's forehead can be characterized as brighter than that of the other individuals in the array, the defendant

has failed to establish that the brightness of his forehead was intentionally designed to bring attention to his photograph. Moreover, as the trial court observed, there is a bright spot on another photograph within the array. Other than the aforementioned bright spot, the array included photographs uniform in size of six young African American males with similar, braided hairstyles and similar facial hair. The photographs in the lineup certainly could not be characterized as “grossly dissimilar.” *See State v. Edwards*, 868 S.W.2d 682, 694 (Tenn. Crim. App. 1993) (citing *United States v. Wade*, 388 U.S. 218, 233, 87 S. Ct. 1926, 1935 (1967), for the proposition that “a lineup would be considered unduly suggestive only when the other participants were grossly dissimilar”). In addition, the defendant’s photograph appears only a single time in the lineup. Mr. Bush testified that he was certain of the identification, noting that he had ample time and lighting to closely observe the defendant’s face during the offense. Because the defendant has failed to establish that the procedure used to procure the pretrial identification was unduly suggestive, we need not discuss further the factors outlined in *Biggers* to determine whether the identification was “nonetheless reliable.”

### *III. Corrected Judgments*

The defendant was originally charged with two counts of the first degree murder of victim Gayle Meadows, one count of felony murder and one count of premeditated murder. At the conclusion of the trial, the jury convicted the defendant of the lesser included offense of second degree murder on each count. Following the sentencing hearing, the trial court imposed a sentence of 20 years on each murder count and, although the trial court noted that the convictions “would merge,” the judgment forms indicate that these sentences are to be served concurrently to one another. Although the practical effect of the current alignment is that the defendant is serving a single, 20-year sentence for second degree murder, the legal reality is that the defendant stands convicted of two separate offenses for the same act, the murder of Gayle Meadows, in violation of double jeopardy principles. *See State v. Cribbs*, 967 S.W.2d 773, 788 (Tenn. 1998) (“[W]hen only one person has been murdered, a jury verdict of guilt on more than one count of an indictment charging different means of committing first degree murder will support only one judgment of conviction for first degree murder.”). Thus, in order to protect both the defendant’s right to be free from double jeopardy and the sanctity of the jury’s verdict, *see State v. Howard*, 30 S.W.3d 271, 275 n.4 (Tenn. 2000), the judgments must be vacated and replaced by one judgment that merges the convictions and effects a single judgment of conviction of second degree murder.

### *IV. Conclusion*

We hold the evidence at trial sufficient to support the defendant’s convictions of second degree murder and attempted aggravated robbery. Because the defendant failed to establish that the identification procedure utilized in this case was unduly suggestive, we conclude that the trial court did not err by refusing to suppress the pretrial identification. Finally, because we recognize as plain error the failure to merge the convictions for second degree murder, the case must be remanded to the trial court for the entry of a single judgment imposing a conviction of second degree murder.

---

JAMES CURWOOD WITT, JR., JUDGE